

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROCHELLE DANIEL,

Plaintiff,

vs

Case No: 11-13141
Honorable Victoria A. Roberts

DTE ENERGY,

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S ORDER

Before the Court is Plaintiff's Objections to Magistrate Judge Paul Komives' Order Denying Plaintiff's January 30, 2012 Motion to Compel and Motion for Sanctions and Denying Plaintiff's April 2, 2012 Motion to Strike the Affidavit of Edward W. Peart.

Plaintiff says the Magistrate Judge erred by not striking the affidavit of Edward Peart. Her position is that Defendant submitted contradictory affidavits on different occasions.

The Court will reverse a Magistrate's ruling on a pretrial, non-dispositive motion only if the decision is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The clearly erroneous standard applies to factual findings made by the Magistrate; his legal conclusions are reviewed under the "contrary to law" standard. *Gandee v Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff'd*, 19 F.3d 1432 (6th Cir. Mar. 14, 1994)(Table). A finding is clearly erroneous when, "although there is evidence to support it, the reviewing court is ... left with the definite and firm

conviction that a mistake as been committed.” *Robinson v Allstate, Ins. Co.*, No. 09-10341, 2011 WL 3111947, at *2 (E.D. Mich. July 26, 2011) (quoting *United States v United States Gypsum Co.*, 330 U.S. 364, 395 (1948)). “If more than one permissible view of the evidence exists, the Magistrate’s decision cannot be clearly erroneous.” *Id.* (citing *Anderson v City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985)). A legal conclusion that fails to apply or misapplies case law, statutes, or procedural rules is “contrary to law.” This standard requires the Court to use independent judgment. *Id.*

The Court carefully and thoroughly reviewed the record; the Magistrate’s decision is neither clearly erroneous nor contrary to law.

The Court **REJECTS** the Plaintiff’s objection and **ADOPTS** the Magistrate Judge’s Order.

IT IS ORDERED.

/s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: August 29, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record and Rochelle Daniel by electronic means or U.S. Mail on August 29, 2012.

s/Linda Vertriest
Deputy Clerk